IN THE SUPREME COURT OF THE ST ATE OF MONTANA

Supreme Court Cause No. DA 10-0099

IN THE MATTER OF THE ESTATE OF:

WILLIAM F. BIG SPRING, JR.,
Deceased.

JULIE BIG SPRING AND WILLIAM BIG SPRING, III,

Appellants,

v.

ANGELA CONWAY, DOUG ECKERSON, and GEORGIA ECKERSON,

Appellees.

APPELLANT'S REPLY BRIEF

ON APPEAL FROM THE NINTH JUDICIAL DISTRICT COURT
the HONORABLE LAURIE McKINNON presiding

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PROCEDURAL STATUS

Based upon the *Order Denying Motion to Dismiss for Lack of Subject Matter Jurisdiction*, the actual procedural status of this case before the District Court is that the court had denied Appellants William and Julie Big Spring's Motion to Dismiss on jurisdictional grounds, and set the matter for "review . . . to determine if a trial date is necessary or a hearing to enforce the settlement agreement." *ORDER DENYING MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION*, pg. 7.

Notwithstanding the length of time this matter has been before the District Court, there is clearly the potential for further litigation in the State District Court on a number of issues related to the administration of the estate of the deceased, William F. Big Spring. Sr..

FACT ISSUES

Both Appellees Eckerson and Angela Conway have included fact material in their briefs which is not of record in the District court. Eckerson makes assertions regarding his unresolved claim against the estate of Bill Big Spring, about payments supposedly made directly to William and Julie, and he makes assertions regarding the alleged knowledge of William and Julie.

Appellee Angela Conway includes information regarding the alleged distribution of the estate before she was involved in the litigation. None of these matters were of record in the District court.

A review of Appellee Eckerson's Claim against the estate, reveals inconsistent statements when viewed in the context of the court record and documents filed by Georgia Eckerson as the Personal Representative of the Estate. Particularly, Eckerson claims that he paid William and Julie a total sum of $37,000 for the land: a payment of $20,000 to the Personal Representative and a supposed payment of $17,000 directly to William and Julie. *See Appellee Eckerson's Brief* at pg. 5 & 6.

This statement contradicts the actual filings with the district court by Georgia. In the Final Inventory and Accounting, Georgia represents to the court that the only asset of the estate is the land, that she sold the land to Eckerson for $20,000 and distributed the $20,000 to William and Julie. See. *CRR Doc.* 11 & *CRR Doc.* 61. Eckerson also claims that the sale to him from Georgia was a family transaction and that Georgia, William and Julie were aware of the outcome.

Filed herewith are Affidavits from William Big Spring and Julie Big Spring indicating that but for money which they received from Georgia and were told that it was the proceeds of a grazing lease, they (William and Julie) did not receive

even the $10,000 each purportedly paid to them. *See Affidavits of William Big Spring and Julie Big Spring.*

SUMMARY OF REPLY ARGUMENT

Neither Appellee, Doug Eckeson or Angela Conway, addressed the legal arguments made by the Appellants, William and Julie Big Spring. Rather both Eckerson and Conway mischaracterize the nature of the case and erroneously assert that because this case is about the fee land, it is a case regarding *in rem* jurisdiction over which the State District Court's exercise of jurisdiction does interfere with tribal self-government.

This case is not about Bill, Jr.'s Indian fee land. Nor is this is a case about tribal jurisdiction over the potential heirs of Bill Big Spring, Jr., as Angela would assert.

It is a case about Bill's estate: what that estate consists of; who are the legal heirs of the estate; whether there is a will, and the associated issues related to probate and administration of any will; whether are claims against Bill's estate, and the validity of those claims; and, finally, how the estate should be distributed.

Because they mischaracterize the nature of the case, both Appellees Eckerson and Conway misapply the requirements of *State ex rel. Iron Bear v.*

District Court,162 Mont.335, 512 P.2d 1292 (1973) to a legally incorrect conclusion.

While the Montana State Supreme Court has on policy grounds allowed suits by tribal members against non-members to be brought in state district court, that policy is ultimately limited by dominant Federal law principles, both statutory and judicial. Application of those dominant Federal law principles in this case compels the conclusion that exclusive probate jurisdiction over the estates of tribal members resident on the Reservation and their assets located on the reservation, lies in the resident tribe - in this case, the Blackfeet Tribe.

Given the clear infringement on tribal self-government and existing preemptive federal statutory requirements for the assumption of state jurisdiction, there is no room for concurrent state court jurisdiction over the administration in probate of the estates of tribal members resident on their own reservation at the time of their death or over the property of that deceased Indian located within his or her own Reservation.

A. NATURE OF THE CASE.

Both Appellees Angela and Eckerson incorrectly attempt to mischaracterize the nature of the case as being about the assets of Bill Big Spring's estate, rather than about the estate itself. In so doing, both argue that since the principal asset

of the Big Spring's estate was Indian fee land, based on the holding in *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., et al.*, 554 U.S. ____, 128 S.Ct. 2709 (2008), it is a case about *in rem* jurisdiction over an asset over which neither the Blackfeet Tribe or the Federal government have plenary jurisdiction.

Angela also argues that since she is a descendant of the Blackfeet Tribe and not an enrolled tribal member, given the nature of the land as fee land, the rule in *Montana v. United States*, 450 U.S. 544 must be applied. The result of which would be no tribal court jurisdiction over her.

Both assertions are erroneous and must be rejected. This case is about the power and authority to regulate the estates of tribal members who own Indian fee land within, and are resident on, their own reservations at the time of their deaths. The location of the assets of the estate of deceased person may give rise to ancillary probate proceedings, but the general rule is that the government where the deceased was resident at the time of death will have probate jurisdiction over all assets located within the territory of that sovereign's jurisdiction.

1. There is no *in rem* or *quasi in rem* jurisdiction.

Angela asserts that the state district court's jurisdiction was an appropriate assertion of *in rem* jurisdiction pursuant to Montana statutory law. Appellee

Conway's reliance on Montana statutory law is not only misplaced, when read in the context of Montana case law, the *in rem* argument actually mitigates in favor of tribal court jurisdiction and against state court jurisdiction. Section 72-1-201 MCA defines the territorial application of Montana's probate code. Pursuant to that section, Montana asserts that its' probate code applies to: 1) "the affairs and estates of decedents, . . . and other persons to be protected in [Montana]; 2) the property of nonresidents located in [Montana] or property coming into the control of a fiduciary who is subject to the laws of [Montana]; and, 3) incapacitated persons and minors in this state." MCA Sec. 72-1-201 (2009).

Section 72-1-202 MCA, defines the subject matter jurisdiction of Montana courts related to probate matters. That section reads in pertinent part:

> 72-1-202. Subject matter jurisdiction. (1) to the full extent permitted by the constitution , the court has jurisdiction over all subject matter relating to:
>
> (a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estate of protected persons; and (b) protection of minors and incapacitated persons.

Appellee Eckerson relies on the Montana Supreme Court's decision in *First, Jr. v. State ex rel. LaRoche* (1991), 247 Mont. 465, 808 P.2d 467, for his assertion that the state district court had *in rem* or *quasi in rem* jurisdiction in this case. However, even if this were an *in rem* or *quasi in rem* proceeding (which it is

not) both Montana statutory law and the decision in *First* actually support a lack of state court jurisdiction based on an *in rem* or *quasi in rem* analysis.

In *First*, the Montana Supreme Court began by stating the issue as being whether Montana "could utilize its income withholding procedure against off-reservation income payable to an Indian, who resides on a Montana reservation, to enforce a court-ordered child support obligation." *Id.* Finding the case to be about a sum certain of money, the Court characterized the proceedings as *in rem* or *quasi in rem*. *Id.* From that characterization the Court concluded that Montana could use its income withholding procedures to collect the tribal member's off-reservation income. *Id.* However, the Court in First, began its analysis by acknowledging that "Montana tribunals lack subject matter and personal jurisdiction in cases involving Indian litigants and child support obligations when there are no established off-reservation acts". *Id.* citing *State ex rel. Flammond v. Flammond* (1980),190 Mont. 350, 621 P.2d 421; and *Three Irons v. Three Irons* (1980), 190 Mont. 360, 621 P.2d 476.

In this case, Bill Big Spring's Indian fee land is located within the exterior boundaries of the Blackfeet Indian Reservation - his home reservation, where he was resident at the time of his death. Applying the principals set forth in the *First* case and reading Montana statutory law in light of those principles, compels the conclusion that the state court lacked jurisdiction here.

Except for the fact that it is real property, as opposed to personal property (eg. a vehicle), Indian fee land is still just Indian owned property. Applying *First* to these facts, because the Big Spring's estate's fee property is located within the Blackfeet Indian Reservation, there is no state authority, whether viewed as *in rem* or *quasi in rem* - it is still Indian owned property within an Indian reservation. Unlike the off-reservation income at issue in *First*, Bill's estate's fee land, is therefore not property located within the State of Montana. See 72-1-202 MCA. Nor is it property of a non-resident located in the State of Montana, which has come into the control of a fiduciary who is subject to the laws of Montana. *Id.*

Further, while the State of Montana claims subject matter jurisdiction over the estates of decedents, including the construction of wills, and the determination of heirs and successors of decedents, *See* 72-1-202 MCA, those are areas of law which, with respect to tribal members resident on their own reservations, are within the exclusive jurisdiction of the tribe. As set forth in William and Julie's opening brief, pgs. 21-25, those are areas of law are "within the province of the tribal court", and an exercise of state court jurisdiction directly infringes on tribal self-government. *Id.*

Montana's probate jurisdiction is thus limited by its territory and the subject matter of the issues. Established Federal Indian law principles limit state court authority on an Indian Reservation to non-Indian property and non-tribal members.

Bill Big Spring , Jr., the deceased, was an enrolled Blackfeet Tribal member, resident on the Blackfeet Reservation at the time of his death, and all his property, including his Indian fee land, was located within the Reservation.

On these facts, there is no *in rem* or *quasi in rem* proceeding, and both Federal and State law principles dictate exclusive tribal court jurisdiction.

2. Angela's Status does not alter the jurisdictional outcome.

In this same vein, the case is not about Angela or her status as a party or potential heir. Consequently, Angela's reliance on *Montana v. United States*, 450 U.S. 544 is without merit. Further, the land here is Indian fee, rather than non-Indian fee.

Indeed, if anything, Angela's status as a non-Indian once again mitigates in favor of tribal court jurisdiction. As a non-Indian, Angela is essentially making a claim against the estate of Bill Big Spring, Jr., a tribal member, and against his acknowledged natural children, William and Julie, who are both tribal members. Claims by non-Indians arising out of reservation based activities lie within the exclusive jurisdiction of the tribal courts.

And, ironically, while it has no legal bearing on the outcome of the jurisdictional analysis, apparently so too is Georgia Eckerson, the Personal Representative of the Estate, a Blackfeet Tribal member.

B. NEITHER WILLIAM AND JULIE'S PARTICIPATION IN THE CASE OR THE ACTIONS OF THE PERSONAL REPRESENTATIVE DICTATE THE JURISDICTIONAL OUTCOME.

Both Appellee's Eckerson and Angela have opined throughout their argument that William and Julie's participation in the case, either directly or through the actions of Georgia, the Personal Representative, mandate state court jurisdiction. No law supports this assertion.

The actions of either the personal representative or the potential heirs are insufficient to predicate an exercise of state court jurisdiction in a matter otherwise with the exclusive jurisdiction of the Tribal court. Any other outcome would render meaningless the rule that jurisdiction cannot be conferred by the consent of parties, where none would otherwise exist. *See Appellant's Opening Brief*, pgs. 10-11.

William and Julie were not independently represented throughout this matter. Rather they relied upon their mother, Georgia, the Personal Representative who retained counsel to advise her. William and Julie did not make the choice regarding where, jurisdictionally, the probated would be filed; Georgia did. And, like it or not, reality is that Montana attorneys too often file cases in state district courts over which Tribal courts would have exclusive jurisdiction because they either aren't admitted to practice in a tribal court, don't

want to go to the tribal court, don't think that tribal courts can handle that particular type of case, and, in some instances, because the client doesn't want to go to the tribal court. That choice, in and of itself, cannot vest jurisdiction where there is none.

It is interesting to note, that while Georgia and Appellee Doug Eckerson apparently felt that the Blackfeet Tribal Court had jurisdiction to not only divorce them, but to enter a decree involving the Georgia and Eckerson's non-Indian fee land located outside the Blackfeet Reservation, *See Appellee Eckeson's Appendix, Exhibit C, Decree of Dissolution of Marriage, Blackfeet Tribal Court* No. 98 CA 219, pg. 2 no. 10 and pg. 3 no. 5, Georgia did not see fit to file her late ex-husband's probate in the Blackfeet Tribal Court, and Appellee Eckerson now asserts that the Tribal Court has no jurisdiction over Bill's Indian fee land located within the Reservation.

Finally, there is no proof or allegation that Bill Big Spring, Jr., had sufficient off-reservation contacts to somehow vest the state court with jurisdiction with jurisdiction over his on-reservation estate.

As has been said:

> Tribal court versus federal court versus state court jurisdiction is one of the most challenging Indian law issues facing the courts today. However, one thing

> is clear: tribal courts have jurisdiction over tribal members conducting business on tribal land with other tribal members.
>
> Further, we have previously adhered to jurisdictional rules that require this Court to refrain from obstructing tribal court jurisdiction when "the exercise of state jurisdiction would interfere with reservation self-government." (internal citation omitted). In addition, we have stated: "Absent the clearest evidence of the Tribes' intent to consent to the assertion of authority by state courts onto their sovereign land, the Tribes retain their exclusive jurisdiction." (internal citation omitted).

Bradley v. Crow Tribe of Indians, 2003 MT 82, ¶¶ 37 & 38, 315 Mont.75 ¶¶ 37 & 38, 67 P.3d 306 ¶¶ 37 & 38 (Nelson, J., dissenting) (internal citations omitted).

Contrary to any assertions made by the Appellees, the exercise of state court jurisdiction over the probates of Indians who die resident on their own reservation, with their assets also located on that reservation, impermissibly interferes with reservation self-government. Nothing that any party to that probate does can divest the tribal court of its exclusive jurisdiction, and in turn, vest the state court with jurisdiction that it does possess.

Importantly, the Blackfeet Tribe has not given clear evidence of its intent to consent the assertion of state court jurisdiction onto its sovereign lands, and the Tribe therefore retains exclusive jurisdiction in the area of inheritance and probate of the estates of tribal members who die resident on their reservations and their estates located on that reservation.

C. WITH RESPECT TO INTERNAL TRIBAL MATTERS, ACCESS TO STATE COURT IS CONTRARY TO PREVAILING FEDERAL LAW

Both Appellee's Eckerson and Conway assert that pursuant to the holding in *Bonnet v. Seekins*, 126 Mont. 24, 243 P.2d 317 (1952), the District Court had jurisdiction and to deny jurisdiction in this instance "would amount to a denial of equal protection of the laws to our citizens." *Iron Bear v. District Court,* 162 Mont at 347, 512 P.2d at 1299.

While this policy rule of the Montana Supreme Court may continue to have some application to disputes arising between non-Indians and tribal members occurring on a reservation, See *Morigeau v. Gorman* (2010), 210 MT 36 ¶¶ 11 & 12 , ___Mont.___ ¶¶ 11 & 12, ____P.3d.___, ¶¶ 11 & 12, it can have no application to internal tribal matters in light of the United States Supreme Court's holdings in *Kennerly v. District Court*, 400 U.S. 423, 423-430 (1971) and *Fisher v. District Court*, 424 U.S. 382 (1976).

In 1973, the United States Supreme Court decided *Kennerly v. District Court*, 400 U.S. 423. In the *Kennerly* case. the U.S. Supreme Court clearly held that until both the State of Montana and the Blackfeet Tribe complied with the requirements of the Indian Civil Rights act regarding the extension of state jurisdiction on the Blackfeet Indian Reservation. *Id. at pgs*. 424-429.

Addressing arguments similar to those made by Eckerson and Angela here, regarding the language of the Blackfeet Tribal Code and the notion of concurrent state court jurisdiction over reservation based disputes involving tribal members, the United States Supreme Court said: "We think the meaning of these provisions is clear: the tribal consent that is prerequisite to the assumption of sate jurisdiction under the provisions of Title IV of the Act [Indian Civil Rights Act of 1968, 25 U.S.C. §1326] must be manifested by majority vote of the enrolled Indians within the affected areas of Indian country. Legislative action by the Tribal Council does not comport with the explicit requirements of the Act." (footnote omitted). Id. at 429.

The Court in *Kennerly* specifically addressed the notion of state assumption of jurisdiction over tribal members engaged in Reservation based activity under both §7 of the Act of August 15, 1953, 67 Stat. 590 (commonly known as "Public Law 280") and pursuant to Title IV of the Indian Civil Rights Act of 1968, 82 Stat. 78, 25 U.S.C. §§1321-1326. In a *Per Curiam* decision, the Court found that Montana had not made a valid assumption of jurisdiction under either the 1953 Act, *Kennerly,* 400 U.S. at 424-427, or the 1968 Indian Civil Rights Act. *Id.* at 428-429.

Notwithstanding the U.S. Supreme Court's 1971 holding in *Kennerly*, just two (2) years later, the Montana Supreme Court decided *State ex rel. Iron Bear v.*

District Court,162 Mont.335, 512 P.2d 1292 (1973). While the Montana Supreme Court acknowledged the U.S. Supreme Court had reversed its prior holding in *Kennerly*, the Montana Supreme Court went on to state:

> *Kennerly* was reversed by the United States Supreme Court, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d. 507, but it is important to note that the United States Supreme court action was based on other grounds. *Bonnett* is still the law of this state.

Iron Bear v. District Court,162 Mont. 335, 341, 512 P.2d 1292, 1297.

However, a close reading of *Kennerly* compels the conclusion that there were no "other grounds". The U.S. Supreme Court had clearly rejected the Montana Court's rationale that to deny tribal members access to state court's would be a denial of due process and equal protection under Montana's Constitution.

Thus in 1975, the Montana Supreme Court decided *State ex rel. Firecrow v. District Court*, ___ Mont. ___, 536 P.2d 190 (1975). In the Firecrow case, rejecting an advisory opinion of the Northern Cheyenne Appellate Court, the Montana Supreme Court found that the state district court had concurrent jurisdiction over an adoption of a Northern Cheyenne Tribal member resident on the Northern Cheyenne reservation. In reaching its conclusion, the Montana Supreme Court relied on Montana statutory law, vague notions of state jurisdiction which purportedly existed prior to the adoption of a constitution by the Northern Cheyenne Tribe in 1935 pursuant to the Indian Reorganization Act of 1935, 25

U.S.C. §461 et seq., and on the Montana Court's continuing policy declaration that to deny Indians access to Montana Court's was a constitutional violation. *Firecrow, Id.*

The *Firecrow* case was appealed to the United States Supreme Court and in 1976, in another *Per Curiam* decision, the U.S. Supreme Court once again reversed the Montana Court and found exclusive Tribal Court jurisdiction. *Fisher v. District Court*, 424 U.S. 382 (1976).

The *Fisher* Court again rejected arguments that denying tribal members access to state courts represented impermissible racial discrimination or that it resulted in unjustified disparate treatment. *Id. at* 390. The Court found that "[t]he exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under Federal law." *Id.* And, the Court went on to state that, "even if a jurisdictional holding occasionally results in denying an Indian plaintiff a forum to which a non-Indian has access, such disparate treatment of the Indian is justified because it is intended to benefit the class of which he is a member by furthering the congressional policy of Indian self-government." *Id. at 390-391, citing Morton v. Mancari*, 417 U.S. 535, 551-557, 94 S.Ct. 2472, 2483-2485, 41 L.Ed.2d 290 (1974).

Fisher is also instructive and controlling on what action is necessary by the Federal and Tribal governments to preempt state jurisdiction and provide for exclusive tribal jurisdiction. Discussing the Northern Cheyenne Tribe's history and supportive federal policy, the Court said:

> The right of the Northern Cheyenne Tribe to govern itself independently of state law has been consistently protected by federal statute. . . . . In 1935 the Tribe adopted a constitution and bylaws pursuant to §16 of the Indian Reorganization Act, 48 Stat. 987, 25 U.S.C. §476, a statute specifically intended to encourage Indian tribes to revitalize their self-government. Acting pursuant to the constitution and bylaws, the Tribal Council of the Northern Cheyenne Tribe established the Tribal Court and granted it jurisdiction over adoptions "among members of the Northern Cheyenne Tribe.
>
> **State-court jurisdiction plainly would interfere with the powers of self-government conferred upon the Northern Cheyenne Tribe and exercised through the Tribal Court.** It would subject a dispute arising on the reservation among reservation Indians to a forum other than the one they have established for themselves.
>
> **No federal statute sanctions this interference with tribal self-government. Montana has not been granted nor has it assumed, civil jurisdiction over the Northern Cheyenne Indian Reservation, either under the Act of Aug 15, 1953 67 Stat 488, or under Title IV of the Civil Rights Act of 1968, 82 Stat. 78, 25 U.S.C. §1321 Et seq.**
>
> Since the adoption proceeding is appropriately characterized as litigation arising on the Indian reservation, **the jurisdiction of the Tribal Court is exclusive.**
>
> . . . The tribal ordinance conferring jurisdiction on the Tribal Court was authorized by §16 of the Indian Reorganization Act, 25 U.S.C. §476. Consequently, it implements an

> overriding federal policy which is clearly adequate to defeat state jurisdiction over litigation involving reservation Indians. Accordingly, even if we assume that the Montana courts properly exercised adoption jurisdiction prior to the organization of the Tribe, . . ., **that jurisdiction has now been pre-empted.**

Fisher v. District Court, 424 U.S. 382, 386-390. (Emphasis added).

In light of the U.S. Supreme Court's holdings in *Kennerly* and *Fisher*, the Montana Supreme Court's reliance on *Bonnet v. Seekins* for assertions of state jurisdiction over litigation arising on a reservation and involving tribal members, is simply unsupportable and contrary to controlling Federal law principles.

Like the Northern Cheyenne Tribe, the Blackfeet Tribe adopted a constitution pursuant to §16 of the Indian Reorganization Act, 25 U.S.C. §476. And, like the Northern Cheyenne Tribe, one of the powers of self-government conferred on the Tribe by the constitution was the power "to regulate the inheritance of real and personal property other than allotted lands within the Blackfeet Reservation, ..." Constitution of the Blackfeet Indian Tribe of Montana, Article VI. Sec. 1(l). Pursuant to its constitution, the Blackfeet Tribe also has its own court system "for the adjudication of claims or disputes arising amongst members of the Tribe, ..." Id., Article VI. Sec. 1(k).

Based on the U.S. Supreme Court's decision in Fisher, give the existence of the Constitution and courts of the Blackfeet Tribe, *Kennerly* is still controlling

law. Given the facts of this case: that William F. Big Spring, Jr., the deceased) was a Blackfeet Tribal member resident on the Reservation at the time of his death and the assets of his estate are located within the Blackfeet Reservation, State-court jurisdiction plainly would interfere with the powers of self-government conferred upon the Blackfeet Tribe and exercised through the Tribal Court.

No federal statute sanctions this interference with tribal self-government. Montana has not been granted nor has it assumed, civil jurisdiction over the Northern Cheyenne Indian Reservation, either under the Act of Aug 15, 1953, 67 Stat 488, or under Title IV of the Civil Rights Act of 1968, 82 Stat. 78, 25 U.S.C. §1321 et seq.

Since the underlying probate proceeding is appropriately characterized as litigation arising on the Indian reservation, **the jurisdiction of the Tribal Court is exclusive.**

The Blackfeet Tribe's Law Order Code conferring jurisdiction on the Tribal Court was authorized by §16 of the Indian Reorganization Act, 25 U.S.C. §476. Consequently, it implements an overriding federal policy which is clearly adequate to defeat state jurisdiction over litigation involving reservation Indians. Accordingly, even if it is assumed that the Montana courts properly exercised

adoption jurisdiction prior to the organization of the Tribe, . . ., **that jurisdiction has now been pre-empted.**

In sum, it is not a denial of due process or equal protection of a tribal member, if the Blackfeet Tribal Court is found to have exclusive jurisdiction over the probate of the estates of tribal members resident on the Reservation. Neither the Blackfeet Tribe or the State of Montana has ever acted to comply with the Federal statutory requirements to extend state jurisdiction to matters of tribal self-government.

D. BLACKFEET TRIBAL INTERESTS.

It is the understanding of William and Julie (the Appellants) that the Blackfeet Tribe has sought leave to intervene and file an Amicus brief with the Court. That Motion should be granted.

However, even if the Tribe is not allowed to state its interest here, based on Montana case law, the fact that the Blackfeet Tribe has a functioning court system, provides a forum for probate of the estates of tribal members and actively assumes jurisdiction in such cases, is all that is required to preempt the exercise of state jurisdiction. In *Emerson v. Boyd*, (1990), 247 Mont. 241, 805 P.2d 587, the Montana Supreme Court held that the fact that the Ft. Peck Tribal Court was exercising civil jurisdiction over actions where one of the parties was an Indian

who resided on the Fort Peck Reservation, was sufficient to preempt an exercise of state court jurisdiction over a contract dispute between a tribal member and a non-member arising on the Reservation.

The Blackfeet Tribe has a functioning court system and routinely exercises probate jurisdiction over the non-trust estates of tribal members who die resident on the Blackfeet Indian Reservation. This in and of itself, pre-empts state court jurisdiction.

Additionally, the Blackfeet Tribe does have a law or resolution by which it claims the right of first refusal to purchase all land within the exterior boundaries of the Blackfeet Indian Reservation, including Indian fee land. And the Tribe has an entire commercial code and ordinances governing mortgages of land and the foreclosure of those mortgages on land within the Reservation.

CONCLUSION

To the extent that Appellees Eckerson and Conway, even addressed the legal arguments of the Appellants, their assertions are not based on the law and must be rejected. No court has ever held that tribes no longer have jurisdiction over the reservation fee land of tribal members resident on their own Reservations, and the Appellees have cited none to the Court.

No arguments have been advanced which would warrant a deviation from the governing federal law principles regarding the exclusive jurisdiction of tribes over their members and their territory.

Regulating the inheritance of tribal members is a fundamental right of self-government. No federal statute sanctions state jurisdiction over the reservation based estates of tribal members who dies resident on their own reservation. To the contrary, Federal law combined with Tribal enactments have pre-empted the exercise of state probate jurisdiction on these facts.

This case presents litigation which arises on the Reservation, tribal court jurisdiction is therefore exclusive.

DATED this 27th day of July, 2010.

Joe J. McKay, Attorney-at-Law
Attorney for William Big Spring III and
Julie Big Spring

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing Appellant's Brief, and that I served a true and accurate copy of the foregoing Appellant's Brief with the Clerk of the Montana Supreme on July 26, 2010; and that I have served true and accurate copies of the foregoing Appellant's Brief upon each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, by U.S. Mail, postage prepaid thereon, at their addresses as listed in the court record, as follows:

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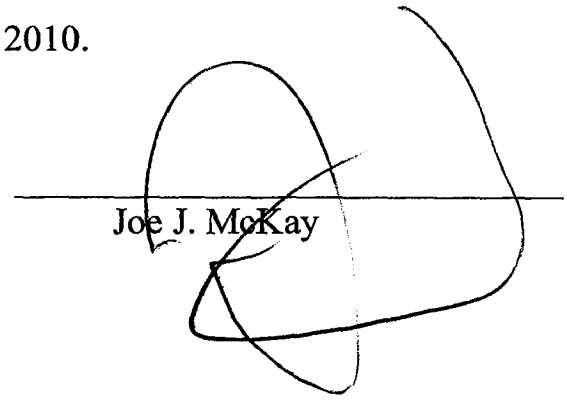
DATED this 27th day of July, 2010.

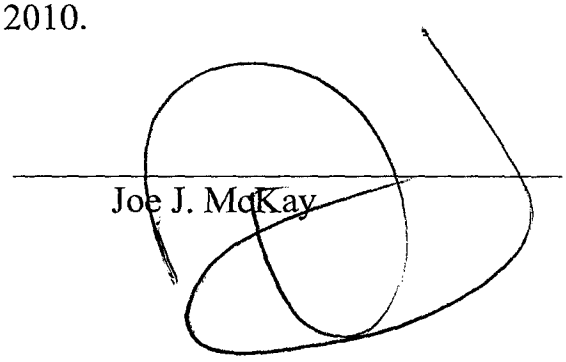


Joe J. McKay

CERTIFICATE OF COMPLIANCE

Pursuant to Rule **16(3)** of the Montana Rules of Appellate Procedure, I certify that this Appellant's Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2007, is not more than 4,853 words, excluding certificate of service and certificate of compliance.

DATED this 27th day of July, 2010.



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